

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of:)	
)	
Spanish Broadcasting System, Inc.)	MB Docket No. 10-89
(MegaTV))	
)	
Petition for Waiver of Section 73.658(i) of)	
The Commission's Rules with Respect to)	
Network Representation)	
To: Chief, Media Bureau		

COMMENTS OF SPANISH BROADCASTING SYSTEM, INC.

Spanish Broadcasting System, Inc. ("SBS"), by counsel, submits these brief Comments in response to the Public Notice released May 6, 2010 by the Media Bureau ("Bureau") in the above-captioned docket. *See* "Comment Dates Established for MegaTV Petition for Waiver of 47 C.F.R. § 73.658(i), The Network Representation Rule," FCC Public Notice, DA 10-775 (Med. Bur., released May 6, 2010) ("*MegaTV Public Notice*"). SBS, the petitioner in this proceeding, is seeking relief from the inequitable impact currently visited upon it by the Network Representation Rule, which absent a waiver, prohibits FCC-licensed television stations that SBS does not own from being represented by SBS's MegaTV network in the market for national "spot" advertising sales. *See* 47 C.F.R. §73.658(i).

On the very same day that the *MegaTV Public Notice* was issued, the Bureau granted a similar waiver request filed by Liberman Television LLC ("Liberman") with respect to its Estrella TV network. *See Liberman Television LLC*, DA 10-774, slip op. (Med. Bur., released May 6, 2010) ("*Estrella TV Order*"). The *Estrella TV Order* was the latest decision in a series of orders dating back to the 1970s under which the FCC has established a *de facto* exemption from

the Network Representation Rule for networks that broadcast predominantly Spanish language programming. *See, e.g., Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN)*, 43 Fed. Reg. 45,895, 45,898 (¶ 18(b)) (Oct. 4, 1978); *Request of Spanish International Network (SIN) for Waiver of §73.658(i); Request of Telemundo Group, Inc. for Waiver of §73.658(i); Request of Latin International Network Corporation for Waiver of §73.658(i)*, Report and Order, 5 FCC Rcd 7280, 7282 (¶ 2) & n.5 (1990); *Azteca International Corp. (Azteca America)*, 18 FCC Rcd 10662 (Med. Bur. 2003).

The multiple permanent waivers of Section 73.658(i) that have been granted over the years have been premised, in part, on recognition of the beneficial impact of competition from new, emerging networks that serve niche audiences. But the basis for these decisions is not limited just to new networks, such as MegaTV and Estrella TV, as the oldest of these waivers, granted to Univision, has now been in effect for more than three decades. Indeed, all Spanish language networks that have thus far sought waiver of the Network Representation Rule have been granted relief, and the Bureau specifically relied on the same reasons articulated in these prior decisions in granting relief to Liberman for the Estrella TV network last month. *See Estrella TV Order*, DA 10-774, slip op. at 2 (¶ 5).

The Bureau's action issuing the *Estrella Order* in early May means that each of the widely-available Spanish language commercial broadcast networks operating in the United States, with the exception of MegaTV, is currently exempt from application of the Network Representation Rule. As a result, in the absence of favorable action by the FCC on the pending request, MegaTV will continue to be at a unique disadvantage in the Spanish television marketplace, unable to act as an agent for national advertising on behalf of affiliate stations despite the fact that the other networks in this niche market are permitted to do so. Indeed, in taking favorable

action in the *Estrella TV Order*, the Bureau specifically recognized “the competitive imbalance that could result in the absence of a waiver.” *Estrella TV Order*, DA 10-774, slip op. at 2 (¶ 5). The same circumstance is present with respect to SBS’s request for waiver.

The justifications relied upon in granting each of the prior waivers apply even more strongly in the case of MegaTV because it is among the newest entrants in the Spanish television programming marketplace. In order to ensure that this new network has a fair opportunity to succeed in this highly competitive business, and is not disadvantaged by a playing field artificially tilted in favor of its more established competitors, the Media Bureau should act swiftly and grant SBS an immediate waiver of the Network Representation Rule with respect to MegaTV.

Respectfully submitted,

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